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CIVIL LAW ISSUE

ALDANA v. SCH. CITY OF EAST CHICAGO, No. 45A05-0110-CV-440, ___ N.E.2d ___ (Ind. Ct. App. June 19, 2002).

BARNES, J.

The facts most favorable to the verdict in this case are that on April 2, 1998, Person, a school bus driver for the City, agreed to transport a group of first graders and chaperones on a field trip. While traveling on the Lake/Porter County Line Road on the return trip, Person noticed that the right wheels of the bus had left the pavement and gone onto the dirt shoulder. As he tried to bring those wheels back onto the pavement, the bus unexpectedly "jumped" and fishtailed into the opposite lane of the road, causing oncoming traffic to stop. Person eventually brought the bus back under control. The bus then stopped at a convenience store several minutes later at the urging of the chaperones. Person denied that the bus ever went up on two wheels. A State Trooper testified that holes and ruts in the road might have been a contributing cause of the incident. There was conflicting evidence concerning the nature and extent of the physical and psychological injuries, if any, suffered by the bus passengers.

. . . The State Trooper who testified that holes and ruts in the road may have contributed to the incident also testified that the weather that day was clear and he knew of no mechanical defects on the bus. He also indicated that the road was dry and not dangerous, and that he did not believe the holes and ruts were such that they would have caused a prudent bus driver to lose control of the vehicle.

[P]laintiffs requested the trial court to instruct the jury on the doctrine of res ipsa loquitur, claiming Person's negligence, and hence that of the City via respondeat superior, could be inferred under the facts of the case. The trial court declined to give the instruction. . . .

. . . .

[W]e are satisfied that the requisites for a res ipsa loquitur jury instruction were met.

First, we accept the proposition that a jury could reasonably infer, based on its common knowledge and experience, that a school bus driver should not lose control of his or her vehicle to the extent Person did, especially on a clear, dry spring day. . . .

There is little case law that is factually analogous to the case before us. However, our supreme court's decision in Merriman v. Kraft, 253 Ind. 58, 249 N.E.2d 485 (1969), is precedent that directly supports our decision today. There, the court concluded that the doctrine of res ipsa loquitur properly applies when a car leaves the street and subsequently

injures a pedestrian and it is shown that the instrumentality causing the injury, i.e. the car, was under the defendant-driver's exclusive control. [Citation omitted.] . . .

We also observe that the Supreme Court of Idaho has addressed an almost identical factual scenario as the one in the case before us. In Blackburn v. Boise School Bus Co., 95 Idaho 323, 508 P.2d 553 (1973), a child was injured when the rear wheels of a school bus encountered a severe bump, causing the child and at least two others to be thrown up to the ceiling of the bus. The court concluded the plaintiff was entitled to submit the case against the bus driver and bus company to the jury under the theory of res ipsa loquitur. [Citation omitted.] . . .

. . . .

KIRSCH, J., concurred.

MATHIAS, J., concurred with separate opinion, as follows:

I concur with the reasoning and result reached by the majority, but I write separately to emphasize that application of the doctrine of res ipsa loquitur in cases involving injury arising from motor vehicle accidents has been and will continue to be proper only in unusual cases. In those motor vehicle cases in which the doctrine of res ipsa loquitur has been raised, our courts have generally held that it does not apply. See e.g. Haidri v. Egolf, 430 N.E.2d 429, 432 (Ind. Ct. App. 1982); Dimmick v. Follis, 123 Ind. App. 701, 706-07, 111 N.E.2d 486, 489 (1953).

However, under the unique single vehicle incident at issue, the evidence presented at trial revealed that any reasonably probable, proximate cause of the alleged injuries was under the control of the bus driver. Therefore, I am constrained to agree that the trial court abused its discretion when it refused to instruct the jury on the doctrine of res ipsa loquitur.

JUVENILE LAW ISSUE

R. A. v. STATE, No. 49A05-0110-JV-432, ___ N.E.2d ___ (Ind. Ct. App. June 18, 2002).

BAKER, J.

Because of her truancy, the State filed a petition alleging that R.A. was a delinquent child. . . .

. . . .

At a fourth hearing, where the State alleged that R.A. had again violated her probation, the juvenile court ordered that R.A. be detained at the Marion County Juvenile Detention Center for failing to attend school. In ordering R.A.'s detention, the juvenile court found that detention was appropriate because R.A. would unlikely reappear for the subsequent hearing. [Citation to Brief omitted.] In addition, the juvenile court found that detention was essential "to protect the child or the community and the parent/guardian/custodian cannot be located or is unable or unwilling to take custody of the child." [Citation to Brief omitted.] The detention lasted seven days, until a fact-finding hearing was held on the latest probation violation.

. . . .

R.A. contends that the trial court lacked the statutory authority to detain her for seven days before a fact-finding hearing on an alleged probation violation. Central to R.A.'s first claim is the proper interpretation of Indiana Code section 31-37-6-6 (Supp. 2001), which requires certain findings before a court may order an alleged delinquent child to be detained, and Indiana Code section 31-37-7-1, which forbids detention of a truant in a secure facility.

Custody of a child in accordance with Indiana Code section 31-37-6-6 may begin before the initial hearing. Police may take a child into custody based on probable cause the child committed a delinquent act or by order of the court on the State's petition. I.C. §§ 31-37-4-1 (court's order), -2 (probable cause); Ind. Code § 31-37-10-5 (formal requirements of

court's order on State's petition). The juvenile court then decides at a detention hearing whether the child should be released or further detained until subsequent proceedings. I.C. § 31-37-6-6. . . .

The instant case deals with a child who has been adjudicated a delinquent and who was alleged to have violated her probation. Our review of title 31, article 37 convinces us that Indiana Code section 31-37-7-1 does not apply to detention in a secure facility when the child has been adjudicated to be delinquent and is alleged to have violated her probation. In so holding, we differ from W.R.S. v. State, 759 N.E.2d 1121 (Ind. Ct. App. 2001), in its interpretation of this provision. In W.R.S. v. State, a panel of this court held that the juvenile court abused its discretion in detaining—in a secure facility before the fact-finding hearing—a child who had been adjudicated a truant and was alleged to have violated probation. 759 N.E.2d at 1123.

To the contrary, a provision in title 31, article 37 of the Indiana Code contemplates the pre-hearing detention—in a secure facility—of a truant who has been adjudicated a delinquent but is alleged to have violated her probation by continued truancy. This provision allows a juvenile court to place an adjudicated truant in a secure facility under five conditions:

> If:
>
> (1) a child fails to comply with IC 20-8.1-3 concerning compulsory school attendance as part of a court order with respect to a delinquent act under IC 31-37-2-3 (or IC 31-6-4-1(a)(3) before its repeal);
>
> (2) the child received a written warning of the consequences of a violation of the court order;
>
> (3) the issuance of the warning was reflected in the records of the hearing;
>
> (4) the child is not held in a juvenile detention facility for more than twenty-four (24) hours, excluding Saturdays, Sundays, and legal holidays, before the hearing at which it is determined that the child violated that part of the order concerning the child's school attendance; and
>
> (5) the child's mental and physical condition may be endangered if the child is not placed in a secure facility;
>
> the juvenile court may modify its disposition order with respect to the delinquent act and place the child in a public or private facility for children under section 7 of this chapter.

Ind. Code § 31-37-22-6(4) (emphasis supplied). We believe this modification statute permits a child adjudicated a truant to be held in a detention facility up to twenty-fours before a fact-finding hearing when it is alleged that the child has violated her probation by repeat truancy. According to this modification statute, if the repeat truant is held in a secure facility for more than twenty-four hours before a fact-finding hearing, the juvenile court will lose the option of placing the child in a secure facility as part of a modification.

The W.R.S. court interpreted subsection (4) of the modification statute to apply only to truants who happen to be runaways. [Citation omitted.] The panel asserted that this provision should not be construed, however, as an "indirect way to incarcerate truants for 24 hours." [Citation omitted.] Finding no mention of runaways in this particular modification statute, we do not conclude likewise. Rather, the text of this modification statute refers exclusively to children who have failed "to comply with IC 20-8.1-3 concerning compulsory school attendance as part of a court order with respect to a delinquent act under IC 31-37-2-3." [Citation omitted.] In other words, if a repeat truant violates her probation, she may be held in pre-hearing detention for up to twenty-four hours, unlike a child who has not

been adjudicated to be truant. [Citation omitted.] Furthermore, there already exists a separate modification statute dealing exclusively with children who are runaways. See Ind. Code § 31-37-22-5(1). If Indiana Code section 31-37-22-6(4) applied only to a child who was both a runaway and a truant, it would be redundant. . . .

Accordingly, we think Indiana Code section 31-37-22-6(4) limits to twenty-four hours—excluding Saturdays, Sundays, and legal holidays—the pre-hearing detention of a child adjudicated a delinquent and alleged to have violated her probation. . . .

. . . .

SULLIVAN, J., filed a separate written opinion in which he concurred, in part, and in which he dissented, in part, as follows:

I concur in all respects of the lead opinion by Judge Baker except with regard to his conclusion that I.C. 31-37-7-1 "does not prevent detention in a secure facility when the child has been adjudicated to be delinquent and is alleged to have violated her probation." [Citation omitted.]

The provision in question prohibits detention in a secure facility of a child alleged to be a delinquent because of truancy. Notwithstanding that R. A. has already been adjudicated a delinquent on that basis, i.e. truancy, the detention in issue is not based upon that adjudication but rather upon an allegation of a yet to be adjudicated violation of her probation.

In any event, even if a detention in a secure facility is appropriate for an alleged repeat truant, I agree that such detention may not exceed twenty-four hours.

DARDEN, J., filed a separate written opinion in which he concurred, in part, and in which he dissented, in part, as follows:

[I] write because I do not concur in the broad sweep it [the majority] has given Ind. Code § 31-37-22-6(4), to wit: that it "permits a child adjudicated a truant to be held in a detention facility up to twenty-four hours before a fact-finding hearing when it is alleged that the child has violated her probation by repeat truancy." [Citation omitted.] Specifically, I believe that such statutory detention follows upon five conditions having been met and that these conditions are the reasons the legislature has authorized the detention in a secure facility in such a case. . . .

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Jane Seigel, Executive Director
Michael J. McMahon, Director of Research
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